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CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted] 300

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS,

vs.

THE DISTRICT OF COLUMBIA.

ON A CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED APRIL 9, 1920.

(27,610)

(27,610)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 855.

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS,

vs.

THE DISTRICT OF COLUMBIA.

ON A CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 12, 1920.

1 In the Court of Appeals of the District of Columbia.

No. 3307.

JOHN C. HEALD, GEORGE E. HAMILTON, and WILTON J. LAMBERT, Committee of the Person and Estate of Eugene Peters, Appellants.

vs.

DISTRICT OF COLUMBIA.

The court of appeals of the District of Columbia certifies that the record in the above-entitled cause discloses the following:

That John C. Heald, George E. Hamilton, and Wilton J. Lambert, committee of the person and estate of Eugene Peters, filed a declaration in the supreme court of the District of Columbia on July 10, 1918, against the District of Columbia to recover the sum of $1,478.26, which they alleged was paid to said District under protest in writing on the 29th of May, 1918, in satisfaction of an assessment against plaintiffs on account of certain intangible personal property held by plaintiffs on the 1st of July, 1917; the ground of the protest being that the said assessment was illegal and void in whole and in its several parts.

Defendant filed a motion to dismiss the declaration, on the ground, among others, that the stocks and bonds upon which the assessment was levied were justly and legally assessed under the law, and that the plaintiffs were not entitled to the relief prayed. The
2 supreme court of the District sustained the motion, and the plaintiffs electing not to amend their declaration but to stand on it, the court entered judgment for the defendant. From this judgment the plaintiffs appealed to the court of appeals of said District.

It is conceded that the plaintiffs and the said Peters at the time the assessment was made were, and ever since have been, residents of the District of Columbia, and that the money heretofore referred to was paid by the plaintiffs under protest in writing, and for the purpose aforementioned, to the District of Columbia.

It is also conceded that a part of the intangible property upon which the said assessment was levied consisted of bonds and stocks of nonresident corporations not engaged in business in the District of Columbia.

The court of appeals certifies that the following questions of law arise upon the record, the decision of which is necessary for a proper disposition of the cause, and, to the end that a correct decision may be reached, desires the instruction of the Supreme Court of the United States upon the said questions, to wit:

1. Does Section 9 of an act of Congress approved March 3, 1917 (39 Stat. L. 1004, 1046), under which said assessment was made,

require that "moneys and credits, including moneys loaned and invested, bonds and shares of stock * * * of any person, firm, association, or corporation * * * engaged in business within said District," but residing outside of said District, shall be assessed by the District of Columbia for the purpose of taxation?

2. If it does, is it invalid? And if invalid, does that fact
3 render void the entire section?

3. Does the section require the District of Columbia to assess the bonds and other securities of the States and their municipal corporations held by residents of the District of Columbia; and if it does, does its invalidity on that account render the entire section void?

CONSTANTINE J. SMYTH,
Chief Justice.

CHAS. H. ROBB,
Associate Justice.

JOSIAH A. VAN ORSDEL,
Associate Justice.

[Endorsed.]

No. 3307. John C. Heald, George E. Hamilton, and Wilton J. Lambert, Committee of the Person and Estate of Eugene Peters, Appellants, vs. District of Columbia. Certificate. Court of Appeals, District of Columbia. Filed Apr. 5, 1920. Henry W. Hodges, Clerk.

4 In the Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing typewritten pages numbered from 1 to 3, inclusive, contain a true copy of the certification from this Court to the Supreme Court of the United States of the question stated therein in the case of John C. Heald, George E. Hamilton, and Wilton J. Lambert, Committee of the Person and Estate of Eugene Peters, Appellants, vs. District of Columbia, No. 3307, for its determination, pursuant to Section 251 of the Judicial Act approved March 3, 1911.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 5th day of April, A. D. 1920.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

Endorsed on cover: File No. 27,610. District of Columbia Court of Appeals. Term No. 855. John C. Heald, George E. Hamilton and Milton J. Lambert, committee of the person and estate of Eugene Peters, vs. The District of Columbia. (Certificate.) Filed April 9th, 1920. File No. 27,610.

FILED
MAY 2
JAMES D. MAHER,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1919

No. [redacted] 800

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS, PETITIONERS,

vs.

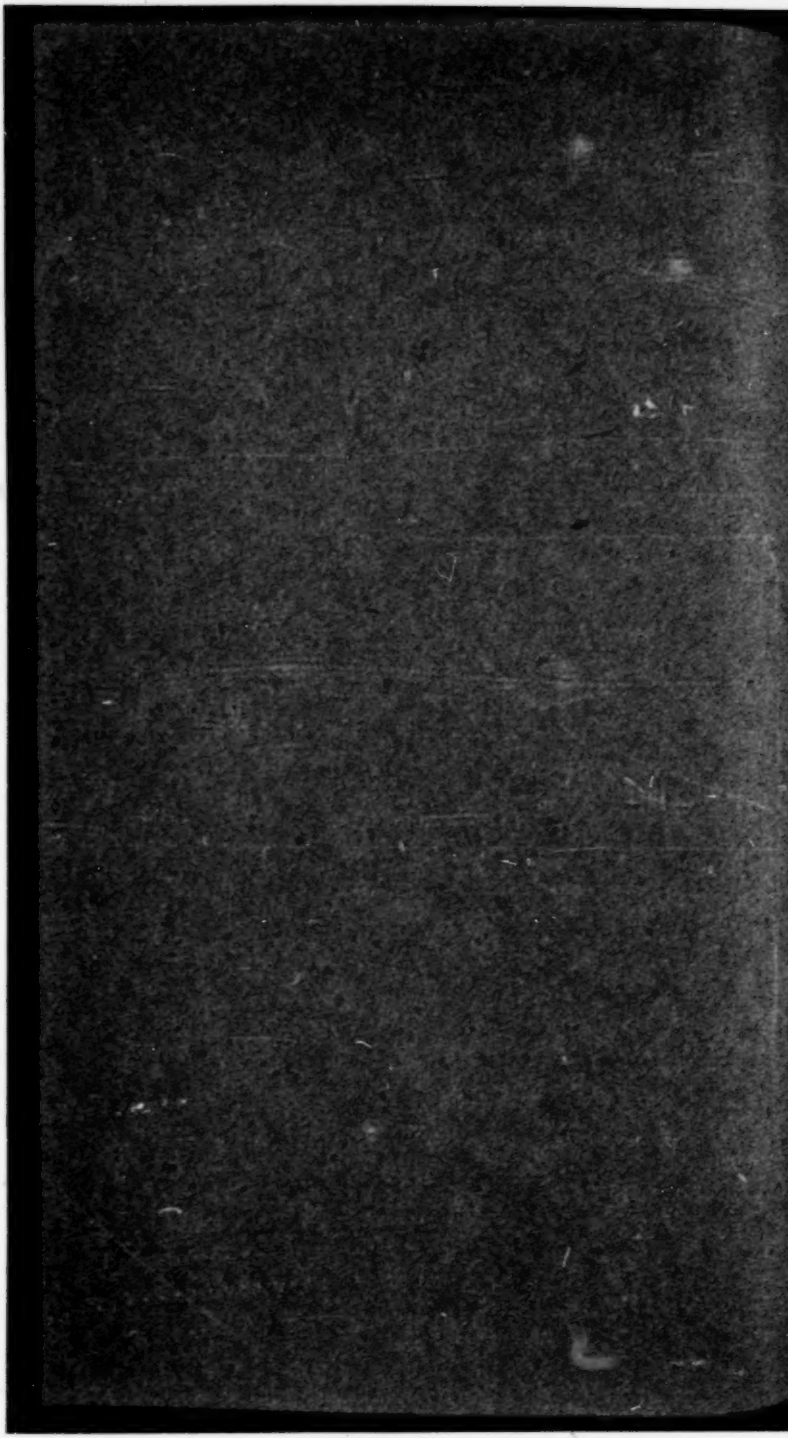
THE DISTRICT OF COLUMBIA, RESPONDENT.

CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Motion to Require Whole Record to Be Sent Up and to Advance Cause for Early Hearing.

AUGUSTUS S. WORTHINGTON,
VERNON E. WEST,
Attorneys for Petitioners,
416 Fifth Street Northwest, Washington, D. C.

[illegible] LAW REPORTING PRINTING COMPANY, WASHINGTON, D. C.



Supreme Court of the United States

OCTOBER TERM, 1919.

No. 855.

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS, PETITIONERS,

vs.

THE DISTRICT OF COLUMBIA, RESPONDENT.

CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Motion to Require Whole Record to be Sent Up and to Advance Cause for Early Hearing.

Now come the above-named petitioners and move the court to require that the whole record and cause be sent up for its consideration as provided in Judicial Code, section 251, and to advance this cause for argument at an early date.

The respondent has waived notice of the motion.

A certified copy of the record is herewith submitted.

The single question involved in this case is as to the construction and validity of the following provision of an Act of Congress, approved March 3, 1917 (39 Stats. L.,

Supreme Court of the United States

OCTOBER TERM, 1919.

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JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS, PETITIONERS,

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THE DISTRICT OF COLUMBIA, RESPONDENT.

CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Motion to Require Whole Record to be Sent Up and to Advance Cause for Early Hearing.

Now come the above-named petitioners and move the court to require that the whole record and cause be sent up for its consideration as provided in Judicial Code, section 251, and to advance this cause for argument at an early date.

The respondent has waived notice of the motion.

A certified copy of the record is herewith submitted.

The single question involved in this case is as to the construction and validity of the following provision of an Act of Congress, approved March 3, 1917 (39 Stats. L.,

1004), making appropriations for the District of Columbia for the fiscal year ending June 30, 1918:

"Sec. 9. That section eleven of the Act entitled, 'An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' approved September first, nineteen hundred and sixteen, be amended so that the same shall read as follows:

" 'Sec. 11. Section six of the Act of July first, nineteen hundred and two, entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," is hereby amended by adding, after paragraph two of said section:

" ' "That the moneys and credits, including moneys loaned and invested, bonds and shares of stock (except the stock of banks and other corporations within the District of Columbia the taxation of which banks and corporations is hereby provided for) of any person, firm, association, or corporation resident or engaged in business within said District shall be scheduled and appraised in the manner provided by paragraph one of said section six for listing and appraisal of tangible personal property and assessed at their fair cash value, and as taxes on said moneys and credits there shall be paid to the tax collector of said District three-tenths of one per centum of the value thereof: *Provided*, That savings deposits of individuals in a sum not in excess of $500 deposited in banks, trust companies, or building associations, subject to notice of withdrawal and not subject to check, shall be exempt from this tax: *Provided, further*, That such tax on moneys and credits shall not apply to bank notes or notes discounted or negotiated by any bank or banking institution, savings institution, or trust company,

nor to savings institutions having no capital stock,building associations, firemen's relief associations, secret and beneficial societies, labor unions, and labor union relief associations, nor to beneficial organizations paying sick or death benefits, or either or both, from funds received from voluntary contributions or assessments upon members of such associations, societies, or unions; nor shall the provisions of this act apply to life or fire insurance companies having no capital stock, nor to the share of stock of business companies which by reason of or in addition to incorporation receive no special franchise or privilege, but all such corporations shall be rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed, and taxed: *And provided further*, That corporations, limited partnerships, and joint-stock associations within said District liable to tax under the laws of said District on earnings or capital stock shall not be required to make any report or pay any further tax under this section on the mortgages, bonds, and other securities owned by them in their own right, but such corporations, partnerships, and associations holding such securities as trustees, executors, administrators, guardians, or in any other manner shall return and pay the tax imposed by this section upon all securities so held by them as in the case of individuals." ' "

The petitioners, John C. Heald, George E. Hamilton and Wilton J. Lambert, as Committee of the Person and Estate of Eugene Peters, insane, sued the District of Columbia in the Supreme Court of the District of Columbia in an action at law seeking to recover the sum of fourteen hundred and seventy-eight dollars and twenty-six cents ($1478.26), which sum the petitioners had paid under protest to the District of Columbia, being the tax under the provisions of the above quoted section 9 upon certain securities held by the petitioners in their fiduciary capacity.

In the presentation of this case to the Court of Appeals of the District of Columbia, three propositions were submitted on behalf of petitioners:

First: That the act requires non-residents engaged in business in the District of Columbia to pay the tax on all their intangible property wherever that property may be situated, and that this provision is void and renders the whole act void.

Second: That the act provides that all residents of the District or persons engaged in business in the District shall pay a tax on bonds and other obligations of the States, or subdivisions thereof, and that this provision is void and renders the whole act void.

Third: That that clause of the act which provides that it shall not apply "to the shares of stock of business companies which by reason of or in addition to incorporation receive no special franchise or privilege," is so uncertain and vague that it is impossible reasonably to give it effect at all, and that this defect renders the whole act void.

The Court of Appeals, after hearing argument by the parties and considering the case for several months, has certified to this court for its determination the first and second of the three above-mentioned propositions. The petitioners ask the court to have the whole record brought up so that all three of the questions may be considered and determined by the court at the same time.

Bearing in mind that in considering any provision of a statute, all its provisions may have to be taken into consideration, it is not unreasonable, we think, to ask that when this court considers the case it shall look over the whole statute to determine whether there is any part of it which renders it wholly void.

It might be that the court would hesitate to hold the

whole act void because it seems to require non-residents engaged in business in the District to pay the tax on all their intangible property wherever situated, or because it does not except the obligations of the States from the tax which it imposes, and yet, when the court should find that to these defects there is added one which renders the principal item of taxation covered by the law impossible of execution because of its extreme vagueness, it would not undertake to reframe a statute so full of serious ambiguities.

Besides, this is preeminently a case for early determination by this court without reference to the fact that it is here in part by certificate from the Court of Appeals. It is a test case in which about 27,000 persons who pay approximately $900,000 yearly are interested. For every payment made by each of these 27,000 persons the District may be liable to suit should the act be held invalid. So, the public authorities should be advised through the final determination of this matter by this court at the earliest practicable opportunity to what extent, if at all, they may rely upon this income.

For these reasons an advancement of the case and an order requiring the record to be sent up are hereby prayed.

Respectfully submitted.

AUGUSTUS S. WORTHINGTON,
VERNON E. WEST,
Attorneys for Petitioners.

NOTICE OF FOREGOING MOTION.

Notice of this motion has been waived by respondent.

FRANCIS H. STEPHENS,
Attorney for Respondent.

FILED
MAY 1 1939
CHARLES E. ELMORE
Clerk

Supreme Court of the United States

October Term, 1938.

No. [redacted] 800

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS, PETITIONERS,

vs.

THE DISTRICT OF COLUMBIA, RESPONDENT.

Memorandum to the Court by Counsel for Petitioners on Question of Jurisdiction.

AUGUSTUS S. WORTHINGTON,
VERNON E. WEST,
Attorneys for Petitioners.
416 Fifth St. N. W., Washington, D. C.

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 855.

JOHN C. HEALD, GEORGE E. HAMILTON, AND WILTON J. LAMBERT, COMMITTEE OF THE PERSON AND ESTATE OF EUGENE PETERS, PETITIONERS,

vs.

THE DISTRICT OF COLUMBIA, RESPONDENT.

Memorandum to the Court by Counsel for Petitioners on Question of Jurisdiction.

This case is before the court on certificate by the Court of Appeals of the District of Columbia and also on application by the petitioners for a writ of certiorari to bring up the whole record.

In both aspects of the case, the jurisdiction of this court rests upon section 251 of the Judicial Code, which is as follows:

> "Sec. 251. In any case in which the judgment or decree of said Court of Appeals is made final by the section last preceding, it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to it for its review and determination, with the same power and authority in the case as if it had been carried by writ of error or

> appeal to said Supreme Court. It shall also be competent for said Court of Appeals, in any case in which its judgment or decree is made final under the section last preceding, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for their proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon said Court of Appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal."

It will be seen that the question of jurisdiction depends upon whether the case is one in which the judgment of the Court of Appeals, if one were rendered, is made final by section 250 of the Judicial Code.

Arant *vs.* Lane, 245 U. S., 166.

That part of section 250 which is applicable here is as follows:

> "Sec. 250. Any final judgment or decree of the Court of Appeals of the District of Columbia may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:
>
> . . . . . .
>
> "Third. In cases involving the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority.
>
> . . . . . .
>
> "Fifth. In cases in which the validity of any

> authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States is drawn in question."

In Washington, Alexandria & Mt. Vernon R. R. Co. *vs.* Downey, 236 U. S., 190, and American Security & Trust Co. *vs.* Commissioners of the District of Columbia, 224 U. S., 491, it was held that the words in paragraph sixth of section 250—"in cases in which the construction of any law of the United States is drawn in question by the defendant"—refers only to general statutes of Congress, and not to those which are applicable only to the District of Columbia. But Mr. Justice Holmes, in delivering the opinion of the court in the latter case, said:

> "Of course there is no doubt that the special act of Congress was in one sense a law of the United States. It may well be that it would fall within the meaning of the same words in the third clause of the same section: 'Cases involving the constitutionality of any law of the United States.' Parsons *vs.* District of Columbia, 170 U. S., 45."

The Parsons case involved the question of the validity of an Act of Congress authorizing the levying of assessments for the laying of water mains in the District of Columbia, which act applied solely to the District. The question of the jurisdiction of this court depended upon the construction to be given to section 8 of the Act of Congress creating the Court of Appeals of the District (27 Stats. L., 434), which allowed appeals to this court "in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of, or an

authority exercised under the United States." It was held that the case involved a question as to "the validity of statutes of the United States and of an authority exercised under the United States." So the court entertained the writ of error, and decided the case upon its merits.

The foregoing section 8 of the act creating the Court of Appeals of the District was carried into section 233 of the Code of Laws for the District of Columbia, and under the latter section there came to this court the case of Smoot *vs.* Heyl, 227 U. S., 518. In that case there was raised the question of the validity of a building regulation relating to party walls which had been promulgated by the Commissioners of the District under an Act of Congress. It was held that this court had jurisdiction on the ground that "the case was one in which there was drawn in question the validity of an authority exercised under the United States."

In delivering the opinion of the court, Mr. Justice Hughes added:

> "The question was a substantial one, and was directly presented, its determination being required unless the appellees succeeded upon one of the other issues. To justify a review of the decision under the act governing this appeal it is sufficient if the validity of the authority is drawn in question irrespective of the conclusion reached by the court below. Baltimore & Potomac R. R. Co. *vs.* Hopkins, 130 U. S., 210, 222. The appeal brings the entire case here. See Horner *vs.* United States, No. 2, 143 U. S., 570, 577; Penn Mutual Life Ins. Co. *vs.* Austin, 168 U. S., 685, 695. In this view, it is unnecessary to pass upon the conflicting contentions with respect to the amount involved."

In the case of State of New Mexico ex rel. McLean & Co. *vs.* Denver & Rio Grande R. R. Co., 203 U. S.,

38 (which was cited by Mr. Justice Hughes in Smoot *vs.* Heyl, supra), the jurisdiction of this court depended upon the construction which the court should give to an Act of Congress allowing an appeal or writ of error from judgments or decrees of the Supreme Court of a territory "in cases wherein is involved the validity of a treaty or statute of, or authority exercised under, the United States." The particular statute involved in that case was an Act of the Legislature of the Territory of New Mexico making it an offence for any railroad company to receive for shipment beyond the limits of the territory hides which had not been inspected as required by the law of the territory. It was held that there was a question in the case as to the "validity of an authority exercised under the power derived rom the United States," and that this court had jurisdiction.

One of the questions included in the certificate of the Court of Appeals of the District of Columbia, involves the power of Congress under the Constitution to authorize the District of Columbia to levy and collect taxes upon all of the intangible property of persons, firms, associations and corporations engaged in business in the District of Columbia, though residing elsewhere.

Counsel for the District of Columbia in their brief in the Court of Appeals made the following contention:

> "So, accepting for the purpose of argument merely, the proposition that the law taxes the entire amount of intangibles of non-residents and viewed merely as a question of power, it can not be said with certainty that Congress overstepped constitutional limitations in imposing such a tax for the privilege of doing business within the District over which it has plenary jurisdiction."

This case also involves the constitutional question of the power of Congress to authorize the District of Columbia to levy and collect the intangible tax upon bond and other obligations of the states and subdivisions thereof. The contention of petitioners that no such power exists, however, was not disputed by the District in the court below.

It would thus seem that there is involved in this case the construction and application of the clause of section 8 of article I of the Constitution relating to the jurisdiction of Congress over the District of Columbia, and the constitutionality of the Act of Congress here involved, so that a writ of error would lie in this case under paragraph third of section 250 of the Judicial Code. It would also seem that the power of the District to collect the tax here complained of involves the validity of an authority exercised under the United States, so that the judgment of the Court of Appeals would not be final under Paragraph Fifth of Section 250. And if there is any question involved which would authorize the issuance of a writ of error, this court will hear and determine the whole case. Smoot *vs.* Heyl, 227 U. S., 518. But the Court of Appeals, in certifying certain questions in this case upon which it desires to be instructed by this court, has evidently assumed that its decision would be final.

Petitioners have no desire to object to the determination of this case on the certificate of the Court of Appeals and writ of certiorari; but file this memorandum merely as a suggestion to the court of the probable lack of jurisdiction, so that the court may be fully apprized of the situation existing before acting upon the petition for the writ of certiorari, and also so that the delay may be avoided that would ensue should the court, without having its attention called to the constitutional questions

involved, permit the case to go to final hearing, and, then, of its own motion, dismiss the certificate, upon the ground that the judgment of the Court of Appeals would not be final, and remand the case to that court for decision. The early determination of this case is a matter of the utmost importance, both to the District of Columbia and to the taxpayers of the District.

Respectfully submitted.

AUGUSTUS S. WORTHINGTON,
VERNON E. WEST,
Attorneys for Petitioners.